

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1026 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

KANUJI CHAMANJI

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/02/98

ORAL JUDGEMENT (Per: B.C.Patel, J.)

The appellant has preferred this appeal against the order of conviction and sentence recorded by learned Additional Sessions Judge in Sessions Case No.49 of 1997 on 25-9-1997 whereby the appellant is sentenced to undergo rigorous imprisonment for life for the offence

punishable under Sec.302 of Indian Penal Code.

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#. We have called for record and proceedings and heard the learned advocate appearing for the appellant and he has pointed out relevant portion of the evidence.

#. Learned Additional Sessions Judge on appreciation of evidence, documentary as well as oral, and after considering the submissions made by the learned counsel and hearing the accused on the point of sentence, passed the aforesaid order.

#. The facts emerge from the record are that on 29-1-1997, the appellant went to Village Kuvarapadar at the house of his in-laws. On the next day morning, i.e. 30th January, 1997, the appellant took his minor daughter Arti aged about 5 years and minor son Vihabhai aged about 3 years and went out. At about 7 a.m. on the same day, the appellant threw his minor children in a deep well where there was no water. As a result of which, the children sustained injuries and they died. One Natvarji, brother-in-law of the appellant, lodged the complaint with Deesa Taluka Police Station vide ext.8. The Investigating Officer proceeded to scene of occurrence. With the assistance of others, the dead bodies were taken out from the well and inquest panchnama and panchnama of scene of occurrence were drawn. Police Inspector recovered exts.28 and 29 (chits) from the shirt of appellant. During hearing of the case, handwritings of appellant were taken and exts.28 and 29 along with the handwritings of the accused were forwarded to the handwriting expert for opinion. The prosecution examined number of witnesses, in all thirteen. We were taken through the evidence of Pravinbhai Vaghjibhai Trivedi (Circle Inspector), P.W. No.3 at ext.15; Kamaji Nanji, P.W. No.4 at ext.17 and Vadliben Ishwarji Bhupaji, P.W. No.5 at ext.18 by the learned advocate appearing for the accused-appellant.

#. It is admitted that the appellant reached Village Kuvarapadar on 29th January, 1997. For giving answer to a call of nature in the morning at about 7 a.m. on 30-1-1997, he went out with two minor children Arti and Vihabhai. His say was that he has not thrown minor children in the well and they might have fallen in the well and he has been falsely implicated.

#. Kamaji Nanji, P.W.No.4, in his evidence has stated before the Court that incident in question took place in winter and he was on the way from his field at

relevant time. For the purpose of watering the field, he has stated that power was supplied during night hours and watering was required to be done during night hours. At about 7 a.m. on 30-1-1997, he left the field for his house and was on the way which passes near the well. There is a waste land which is at a distance of 100 to 150 feet from the well and one Kasturji Gudaji has a land for threshing crop. When the witness Kamaji came near to this place, he saw appellant-Kanuji throwing one boy in the well and thereafter immediately appellant-Kanuji lifted one girl and threw her also in the well. The girl raised cry. The appellant ran towards Village and therefore, witness followed him and at some distance, he caught-hold appellant-Kanuji and thereafter he shouted and as a result of which, Shankarji, Ganeshji, Natvarji-the complainant and other persons came. From the well, the complainant and others tried to see the children, but because of darkness, they could not see anything and called Sayaji Ganeshji Maganji. Ultimately, Natvarji went to Deesa and lodged a complaint and at the instance of Police, this witness with the help of rope took out dead bodies of children from the well. He has described the procedure how the dead bodies were brought out. His statement was recorded on the same day. In the cross-examination, he has stated that he saw the accused for the first time when he was at a distance of 150 feet. He has denied the suggestion of the defence that accused was alone at the well. This witness was also put a question that on seeing the witness accused ran towards the house of Natvarji. This witness has admitted that fact. Thus, in the cross-examination, it has been brought out that accused was at the well and on seeing the witness, accused-appellant ran away. He has denied the suggestion that accused has not thrown the children in the well and he has not seen the incident. He has also denied the suggestion that children fell in the well accidentally. There are some minor contradiction but it does not affect the prosecution case. The learned Judge considered the same and nothing was pointed out to us by the learned advocate from the evidence of this witness to show that this witness is not reliable or that his evidence is not acceptable or that he is interested to rope in the accused-appellant falsely.

#. Vadliben Ishwarji Bhupaji, P.W. No.5, was at the relevant time at her parents' house in Village Kuvarapadar. Her parental house is situated just near the well. She has stated that in the morning at 7 a.m. on the date of incident, for brushing the teeth, when she came out of her house towards the well, she saw the accused throwing the children in the well. First she saw

throwing of boy and thereafter girl. Seeing this, she shouted. In the meanwhile, she saw Kamaji running towards the accused. Her husband also came out. P.V. Trivedi, P.W. No.3 ext.15, Circle Inspector, has deposed about the well and distance of other places. In the map, hut of Iswarji Bhupaji is also shown where Vadliben P.W.No.5 was staying. She has stated that from that hut, well can be seen. It appears that witness is uneducated and have no idea about the distances in feet, etc. When a question was asked as to what would be the height of the hedge near her house, she was not able to reply the height in feet but indicated the same by sign in by hand and accordingly, it appeared to be 3 1/2 feet. She was also questioned about the distance of Kasturji Dudaji's place of threshing the crop and she has pointed out the same also by indicating sign and considering the same in terms of measurement, it appeared to be 25 to 30 feet. The learned Judge, while recording the evidence for the distance and for the height of the hedge, put a note in the evidence. In the cross-examination, she has stated that while standing, she can see the road. She has denied the suggestion that when she saw near the well, only appellant was there. But she has stated that Kanuji-the appellant and his two children were also there. She has stated that Natvarji is not her relative. She has denied the suggestion that when the accused had gone away for answering the call of nature, children fell in the well and thereafter, the appellant came running at the well and it is at that time, she has seen the appellant at the well.

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From the panchnama of the scene of occurrence (at ext.26) and the photographs which are produced on record at exts.9(6) and 9(7), it is clear that it is not possible to accept the suggestion that a child aged about three while playing near the well, because of curiosity, would be looking in the well, and may fall in the well. Children residing in the Village are environmentally aware about the situation prevailing in Village and there is no question of curiosity on their part. Children staying in city having not seen the well, if find the well, then there may be curiosity on their part, but certainly in Villages the well is seen every day by them. Apart from that, if we look at these three documents, it will be clear that there is a protecting wall surrounding the well and again the base of the well is on a higher level than the ordinary ground level which can be seen clearly from the photographs and as there is a protecting wall, there is no question of accidental falling as suggested. Looking to the height of the protecting wall

of the well and the base of the well and also age of the children, it is not possible to accept the suggestion that it may be a case of accident.

#. Learned advocate submitted that no independent witness is examined and witness Kamaji appears to be relative. This submission has no merit because the residents of Village are from Bill Community. Vadliben has stated that she is not related to Natvarji, brother-in-law of the accused. Kamaji is a distant relative of Natvarji but merely because he is a distant relative, it cannot be said that he is a witness who is interested in the success of the prosecution. He is equally related to the appellant and nothing is pointed out in the evidence as to whether there was any enmity between the two and therefore, he was interested in implicating the accused-appellant falsely. The evidence of these two witnesses appears to be natural and convincing. It is an admitted fact that the appellant left the house in the morning for going out with children and started running from the well and was followed by Kamaji. In the cross-examination, the stand is also taken that he was at the well. The presence is established and the question is raised by the appellant that it can be said to be an accidental fall is not acceptable. As we have pointed out that considering the height of protecting wall and the fact that the base of the wall is also on a higher level than the ordinary ground level, it is difficult to accept the suggestion that it is a case of accidental fall more particularly when eye witnesses have deposed that the appellant threw the children in the well.

##. Exts.28 and 29, chits which were recovered from the shirt of the accused-appellant were forwarded to the expert along with the handwritings of accused. The opinion of handwriting expert makes it clear that certain portion is written by the accused. It suggests that the letter was addressed to one Radha. The learned Judge has observed that the prosecution has come out with a case that he had relations with one Radha and inference can be drawn from these writings. We may not deal with this aspect in detail as there is direct evidence of witnesses.

##. We are, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This Court has observed in Girija Nandini
Devi V. Bigendra Nandini Choudry (1967) 1 SCR 93
: (AIR 1976 SC 1124) that it is not the duty of
the appellate Court when it agrees with the view
of the trial Court on the evidence to repeat the
narration of the evidence or to reiterate the
reasons given by the trial Court expression of
general agreement with the reasons given by the
Court the decision of which is under appeal, will
ordinarily suffice."

##. Having heard the learned advocates for
the parties and after going through the record and
proceedings, we are in agreement with the view taken by
the learned Additional Sessions Judge. Hence, appeal
stands dismissed.

Sd/-

(B.C.Patel,J.)

Sd/-

Dt: 6-2-1998 (R.P.Dholakia,J.)
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